

# **RESTRAINT AND SECLUSION IN SCHOOLS (SCOTLAND) BILL**

[AS AMENDED AT STAGE 2]

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## **REVISED EXPLANATORY NOTES**

### **INTRODUCTION**

1. As required under Rule 9.7.8 of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Restraint and Seclusion in Schools (Scotland) Bill, introduced in the Scottish Parliament on 17 March 2025, as amended at stage 2. Text has been added or amended as necessary to reflect amendments made at stage 2 and these changes are indicated by sidelining in the right margin.
2. These revised Explanatory Notes have been prepared by the Non-Government Bills Unit on behalf of Daniel Johnson MSP in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill as amended at stage 2. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or a part of a section, does not seem to require any explanation or comment, none is given.

### **THE BILL**

#### **Overview**

4. The Bill makes provision about the use of restraint and seclusion in schools by individuals acting under the authority of education providers (which includes education authorities, grant-aided schools and independent schools). The policy intention of the Member is to ensure that appropriate techniques of restraint and seclusion are used in schools only as a last resort.
5. The Bill imposes a duty on Scottish Ministers to issue guidance on the use of restraint and seclusion and requires education providers to have regard to this guidance.
6. The Bill requires schools to inform parents of a pupil subjected to restraint or seclusion as soon as possible, and in any event by the end of the school day on which the incident occurred, or where that is not reasonably practicable, within 24 hours of the incident. The Bill also places a duty on education providers to record all incidents of restraint and seclusion in their schools. Education authorities must record all incidents of restraint or seclusion in schools under their management and

report to the Scottish Ministers who must, in turn, report to the Scottish Parliament every year detailing the number of incidents.

7. The Bill enables the Scottish Ministers to develop training standards for restraint and seclusion, recognise standards developed by others, and maintain lists of providers who meet those standards.

### **Commentary on sections**

#### **Section 1 – Restraint and seclusion – definitions**

8. Section 1 defines “restraint” and “seclusion” establishing, in broad terms, the activities that are being regulated under this Bill. The definition of restraint refers to physical contact by a member of staff of an education provider “which has the intention of” significantly restricting the physical movement of a pupil. The use of “significantly” in the definition is intended to make clear that only meaningful or material restrictions of movement amount to restraint and avoid minor or incidental physical contacts from falling within the statutory definition. Seclusion covers anything done by a member of staff with the intention of isolating a pupil from other pupils.

9. The definitions relate to the actions of a member of staff of an education provider. Where a school is under the management of an education authority, the education authority is the ‘education provider’. In the case of an independent school the education provider is the proprietor of that school; and for a grant-aided school it will be the manager of the school. There are eight grant-aided schools in Scotland, seven of which are special schools.

10. Section 1(3) provides that a member of staff of an education provider includes anyone ‘acting under the authority of an education provider’. In addition to covering all teachers, assistants and support staff, it would also cover any contractors or other persons allowed into schools to provide services or work at events. Tying the definitions to things done by members of staff makes clear that the Bill does not cover the use of seclusion or restraint by pupils on each other.

#### **Section 2 – Guidance on restraint and seclusion in schools**

11. Section 2(1) requires the Scottish Ministers to issue guidance to education providers about the use of restraint and seclusion in schools. The guidance will apply to publicly funded primary schools, secondary schools and special schools. It will also apply to independent and grant-aided schools. However, it will not apply to nursery schools. The definition of “schools” is provided in section 6. Subsection (2) sets out the matters that must be covered in the guidance, including an explanation of what is meant by “significantly restricting physical movement”. Subsection (4) provides that the guidance may “elaborate” on the definitions in section 1. This does not allow the guidance to alter the definitions, but it would allow them to be filled out by giving examples of what constitutes seclusion or restraint. Subsection (6) provides for consultation before issuing guidance and lists the bodies and individuals whom the Scottish Ministers must consult.

12. This applies to the initial guidance produced and any revised version of the guidance produced as a result of the terms of the guidance being kept under review. Subsection (7) places a duty on education providers to “have regard to” the guidance.

### **Section 3 – Duty to inform parents of use of restraint or seclusion**

13. 14. Section 3(1) places a duty on a ‘responsible person’ for a school to inform the parent of a pupil subjected to restraint or seclusion about the incident and to provide details of it. This must be done as soon as possible and in any event by the end of the school day on which the incident occurred, or where that is not reasonably practicable, within 24 hours of the incident. “End of the school day” is defined in subsection (3). The responsible person is the proprietor for independent schools, the manager for grant-aided schools and the headteacher or another authorised member of staff in schools run by the education authority. Section 6(2) applies the definition of “parent” in section 135(1) of the Education (Scotland) Act 1980 which includes a guardian or a person who is responsible for the care of a child or young person. A parent may also indicate that another person should be given the information, in which case the responsible person may comply with the duty by informing that other person.

### **Section 4 – Duty to record and report on use of restraint and seclusion**

14. Section 4 requires each education provider to record all incidents of restraint or seclusion in its schools. Each education authority must inform the Scottish Ministers of the number of incidences of restraint and seclusion in schools under its management. Where the education provider is a grant-aided or independent school, it must report the number of incidences to the Scottish Ministers.

15. Subsection (3A) contains a regulation-making power which allows the Scottish Ministers to require education providers to report incidences of restraint or seclusion to a person specified in the regulations, and subsection (3B) allows those regulations to set out operational detail such as timescales, format and onward reporting duties. Its intention is to retain flexibility to establish a national reporting system in future, including the option of involving HM Inspectorate of Education in Scotland (HMIE). Subsection (4) requires the Scottish Ministers to prepare a report on the number of incidences of the use of restraint and seclusion each year and to lay the report after the end of each year. Subsection (4A) enables the Scottish Ministers to specify, by regulations subject to consultation and affirmative procedure, types of restraint or seclusion that need not be recorded or reported. The effect is to allow proportionate exemptions where certain minimal or low risk interventions would not warrant formal data collection.

16. Under subsection (5) the end of each year will fall during school summer holidays, on 31 July.

### **Section 5 – List of approved training providers**

17. Section 5 enables the Scottish Ministers to develop training standards for restraint and seclusion, recognise standards developed by others, and maintain lists of providers who meet those standards. Subsection (2) requires the Scottish Ministers to publish any training standards and lists they maintain. These lists are intended to be the authoritative source of appropriate training for school staff, particularly those in roles involving contact with pupils who are likely to be subject to restraint or seclusion.

## **Section 6 – Interpretation**

18. Section 6 defines “education provider” and applies definitions of certain terms in section 135(1) of the Education (Scotland) Act 1980. The use of the term “pupil” throughout the Bill is to ensure consistency with how other education legislation refers to children in schools, and that all children who attend school are fully covered by the Bill’s provisions and the associated statutory guidance.

## **Section 6A – Regulation-making powers**

19. This section provides that regulations under the Act may make different provision for different purposes or areas and (other than regulations under section 6B(1)) are subject to affirmative procedure. This section does not apply to commencement regulations.

## **Section 6B – Ancillary provision**

20. This section gives the Scottish Ministers power to make incidental, supplementary, consequential, transitional, transitory or saving provision for the purposes of, or in connection with, the Act or any provision made under it. Regulations under this section are subject to the affirmative procedure where they amend primary legislation.

## **Section 7 – Commencement**

21. Section 7 provides for the commencement of sections 6, 6A, 6B and 8 on the day after Royal Assent, with the substantive provisions (sections 1 to 5) commenced by regulations which must be made no later than 31 July 2028.

## **Section 8 – Short title**

22. Section 8 provides for the short title of the Bill, by which it may be cited.



*This document relates to the Restraint and Seclusion in Schools (Scotland) Bill (SP Bill 61A)  
as amended at Stage 2*

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